IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.282 of 1997, RFA No.283 of 1997,
RFA No.286 of 1997 and RFA No.300 of 1997.

Reserved on:13.09.2007

Date of Decision:October 29, 2007

For title, please see over-leaf:

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] No

For the appellant]
]
For the respondents]

Please, see over-leaf:

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.282 of 1997, RFA No.283 of 1997, RFA No.286 of 1997 and RFA No.300 of 1997 which have arisen out of LAC No.72/93, LAC No.66/93, LAC No.70/93 and LAC No.79/93 respectively decided by common award dated 28.7.1997 passed by learned District Judge, Chamba Division, Chamba.

2. The facts, in brief, are that State of Himachal Pradesh for acquiring land for Chamera Dam reservoir in *Mohal Saru* issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') which was published on 20.6.1992. The Land Acquisition Collector (for short 'Collector') announced the award on 15.4.1993. The

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[1] ***Whether reporters of Local Papers are allowed to see the Judgment***? Yes

following are the details of land acquired and compensation awarded by the Collector as shown in Para-3 of the impugned award:-

Sr.No.	No. & title of the petition	Area of Land	Amount of Compensation Awarded.
1.	LAC No.79/93 (RFA No.300/97) Munshi & Anr. Vs. Chief Engineer, CHEP & Ors.	12-4 Bighas	Rs.1,24,072/-
2.	LAC No.66/93 (RFA No.283/97) Hari Ram Vs. Chief Engineer CHEP & Ors.	19-4 Bighas	Rs.3,10,818/-
3.	LAC No.70/93 (RFA No.286/97) Rumalo Vs. Chief Engineer CHEP & Ors.	2-13 Bighas	Rs.71,706/-
4.	LAC No.72/93 (RFA No.282/97) Chandu Vs. Chief Engineer CHEP & Ors.	11-2 Bighas	Rs.2,34,822/-

3. The Collector awarded compensation at different rates in respect of different kinds of land. The details of various kinds of land of the land owners which has been acquired in these cases and details of rate of different kinds of land, as mentioned by learned District Judge in Para-4 of the impugned award are as follows:-

Sr.No.	No. & title of the petition	Details of total area acauired.	Rate per Bigha.
1.	LAC No.79/93 (RFA No.300/97) Munshi & Anr. Vs. Chief Engineer, CHEP & Ors.	**<u>12-4 Bighas</u>**	
		3-11-0 Dhani Awbal	Rs.27,059/-
		6-19-0 Barani Awbal	Rs.19,753/-
		0-03-0 Gair Mumkin Makan	Rs.11,000/-

		1-11-0 Gair Mumkin Gharat and Kuhal	Rs.2750/-
2.	LAC No.66/93 (RFA No.283/97) Hari Ram Vs. Chief Engineer CHEP & Ors.	**19-4 Bighas**	
		3-16-0 Dhani Awbal	Rs.27,059/-
		10-7-0 Barani Awbal	Rs.19,753/-
		0-01-0 Gair Mumkin Gharat	Rs.2750/-
		5-00-0 Gair Mumkin Darya	Rs.600/-
3.	LAC No.70/93 (RFA No.286/97) Rumalo Vs. Chief Engineer CHEP & Ors.	**2-13 Bighas**	
		2-13-00 Dhani Awbal	Rs.27,059 /-
4.	LAC No.72/93 (RFA No.282/97) Chandu Vs. Chief Engineer CHEP & Ors.	**11-2 Bighas**	
		2-5-0 Dhani Awbal	Rs.27,059/-
		7-15-0 Barani Awbal	Rs.19,753/-
		1-00-0 Bagicha	Rs.19,753/-
		0-02-0 Gair Mumkin Makan	Rs.11,000/-

4. The land owners were aggrieved by the compensation awarded by the Collector, therefore, they preferred reference petitions under Section 18 of the Act. The learned District Judge enhanced the compensation as follows:-

Sr.No.	**No. & title of the petition**	**Amount of Compensation Awarded by the Collector.**	**Awarded by the Court.**	**Net amount of enhanced compensation.**
1.	LAC No.79/93 (RFA No.300/97) Munshi & Anr. Vs. Chief Engineer, CHEP & Ors.	Rs.1,24,072/-	Rs.3,42,144/-	Rs.2,18,072/-
2.	LAC No.66/93 (RFA No.283/97) Hari Ram Vs.			

	Chief Engineer CHEP & Ors.	Rs.3,10,818/-	Rs.4,41,331/-	Rs.1,30,513/-
3.	LAC No.70/93 (RFA No.286/97) Rumalo Vs. Chief Engineer CHEP & Ors.	Rs.71,706/-	Rs.1,06,000/-	Rs.34,294/-
4.	LAC No.72/93 (RFA No.282/97) Chandu Vs. Chief Engineer CHEP & Ors.	Rs.2,34,822/-	Rs.3,32,275/-	Rs.97,453/-

The Chamera Hydro Electric Project filed the above appeals against the impugned award.

5. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that learned District Judge has awarded excess compensation to the land owners. The evidence on record has been mis-construed and mis-interpreted. The land owners have failed to prove their case for enhancement of compensation by leading cogent, worth believing evidence for enhancement of compensation. The learned District Judge has erred in relying award dated 24.7.1997 Ext.PX/1 for enhancement of compensation. The sale deed Ext.RW-1/A has been wrongly ignored. The reference petitions were time barred. The learned counsel for the land owners have supported the impugned award.

6. PW-1 Munshi Ram has stated that his land and water mill were in village Katal, Mohal Saru which were acquired by Chamera Project. There were trees on the land. Mohal Saru is adjacent to Mohal Udaipur and is at a distance of 8-10 kilometers from Chamba on Pathankot – Chamba road. He has not been given adequate compensation. PW-3 Naresh Kumar, son of Devi Chand, is the vendor of

sale deed Ext.P-1 vide which he sold 3-9 Bighas land in Mohal Udaipur for Rs.1,32,000 to Smt.Krishan Devi. PW-4 Naresh Kumar, son of Jai Singh, is the vendee of sale deed Ext.P-2 vide which he purchased 25 Biswas of land in Mohal Udaipur in the year 1993 for a consideration of Rs.95,000. PW-5 Baiunsu is the seller of 25 Biswas of land in Mohal Udaipur to PW-4 Naresh Kumar for a consideration of Rs.95,000. He deposed that because of relationship the land was sold at less price. PW-6 Smt.Dhani is the vendor of sale deed Ext.P-3 vide which she sold 4 Biswas land to Raj Kumar in Mohal Saru for a consideration of Rs.6000. The counsel representing the land owners in the reference Court tendered in evidence *Naksha Hakbartan* Ext.P-4 and revenue record Ext.PX, Ext.PY and Ext.PZ of the sale deeds relied by the land owners. He also tendered in evidence Ext.PX/1 certified copy of award dated 24.7.1997 passed by learned District Judge, Chamba. The learned counsel appearing on behalf of the Project in the reference Court tendered in evidence Ext.DX copy of mutation. Gurdei, Registration Clerk again appeared as RW-1 and has produced sale deed Ext.RW-1/A registered on 23.8.1990. This is the entire evidence which has been led by the parties.

7. The learned District Judge has relied award dated 24.7.1997 Ext.PX/1 for assessing the market value of the acquired land. The land owners have accepted the impugned award as they have not filed any appeal or cross objections claiming more compensation over and above awarded by learned District Judge to them in the impugned award. Therefore, the question before this Court is whether reference Court has rightly relied award dated 24.7.1997 Ext.PX/1 for assessing the market

value of the acquired land. The notification under Section 4 of the Act for acquiring 104-2 Bighas land in Mohal Saru was published in H.P. Rajpatra on 20.6.1992 and the award was announced by the Collector on 15.4.1993. The notification under Section 4 of the Act for acquiring the land covered by award Ext.PX/1 was also published on 20.6.1992 and the award was announced by the Collector on 15.4.1993. In the impugned award, the learned District Judge has recorded a specific finding that two petitions decided vide Ext.PX/1 and the four petitions covered by the impugned award have arisen out of same award dated 15.4.1993 of the Collector. This has not been disputed by any party in the present appeals. In fact, award Ext.PX/1 was also assailed in RFA No.310 of 1997 and RFA No.319 of 1997. This Court vide separate judgment has upheld award Ext.PX/1 in RFA No.310 of 1997 and RFA No.319 of 1997.

8. In award Ext.PX/1 the market value of Dhani Awbal land has been fixed at Rs.40,000 per Bigha, Barani Awbal at Rs.27,500 per Bigha, Gair Mumkin Darya at Rs.9000 per Bigha. The learned District Judge after assessing the market value of Dhani Awbal land, Barani Awbal land and Gair Mumkin Darya and after taking into consideration inter-se ratio with respect to the rates of compensation which have been awarded by the Collector has assessed the market value of Gair Mumkin Makan at Rs.16,500 per Bigha, Faldar Bagicha at Rs.27,500 per Bigha, Gair Mumkin Gharat and Kuhal at Rs.4125 per Bigha. The method adopted by learned District Judge for assessing the market value of Gair Mumkin Faldar Bagicha and Gair Mumkin Gharat and Kuhal on the basis of inter-se ratio with respect to the rates of compensation awarded by the

Collector have not been disputed by either party. Therefore, it can be safely held that learned District Judge on the basis of award Ext.PX/1 has rightly assessed the market value of Dhani Awbal land, Barani Awbal land, Gair Mumkin Darya, Gair Mumkin Makan, Faldar Bagicha and Gair Mumkin Gharat and Kuhal land. The sale deed Ext.RW-1/A relied by the appellant is of no help to it for assessing the market value of the acquired land. The appellant simply produced sale deed Ext.RW-1/A in the statement of RW-1 Gurdei, Registration Clerk. One Dharmo sold 14 Biswas land to Amar Nath and Hans Raj for a consideration of Rs.7000 vide sale deed Ext.RW-1/A dated 23.8.1990. There is no evidence on record whether the land sold by sale deed Ext.RW-1/A is comparable with the acquired land. Hence, sale deed Ext.RW-1/A has been rightly not relied by learned District Judge for assessing the market value of the acquired land. The learned District Judge has rightly assessed the market value of the acquired land on the basis of award Ext.PX/1 which pertains to other land in same Mauza Saru under same notification under Section 4 of the Act dated 20.6.1992. The learned District Judge has correctly awarded other statutory payments and interest to the land owners in the impugned award.

9. It has been contended on behalf of the appellant that reference petitions were time barred and learned District Judge has no jurisdiction to condone the delay and entertain time barred reference petitions. The Collector announced the award on 15.4.1993. The reference petitions in all the cases under Section 18 of the Act were filed on 18.6.1993 before the Collector. Before the reference Court in each case application under Section 5 of the Limitation Act was also filed by the land owners and pleaded that award was

announced by the Collector on 15.4.1993 without serving notice under Section 12(2) of the Act. The land owners after the award approached their counsel for filing the reference petitions and on his advice applied for obtaining the certified copies of award on different dates from 19.4.1993 to 24.4.1993 which were made available on different dates from 8.6.1993 to 17.6.1993 and the reference petitions in all cases were filed on 18.6.1993. These applications are supported by the affidavits of the concerned land owners. These applications have been contested by filing the replies but there is no specific denial to the averments of want of notice under Section 12(2) of the Act to the land owners and dates of applications for obtaining certified copies of the impugned award and delivery of the certified copies. In Section 18 of the Act by virtue of Himachal Pradesh Amendment Act No.17 of 1986 Second proviso has been added to the following effect:-

> "Provided further that the Collector may entertain an application under this Section, after the expiry of period of six weeks but within a period of six months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time."

Therefore, in the present case, it is to be seen whether in view of the aforesaid Second proviso to Section 18 of the Act the reference petitions were filed within limitation or not.

10. The Collector announced the award on 15.4.1993 and admittedly the reference petitions were filed on 18.6.1993. In other words, the reference petitions were filed before the Collector on 64th day from the date of award. The Collector under Second proviso to Section 18 of the Act has the power to entertain the reference petitions after the

expiry of period of six weeks mentioned in sub-section (2), but within a period of six months, if he is satisfied that the land owners were prevented by sufficient cause from making the reference petitions in time. The reference petitions in all the cases were filed well within six months from the date of award. The Collector made the reference in each case to the District Judge and it will be presumed that only after satisfying himself regarding limitation, the Collector made the reference. Nobody, including the present appellant, challenged the order of reference made by Collector. Therefore, appellant cannot question that the reference petitions were time barred. The applications filed by land owners under Section 18 of the Act for making reference to the District Judge were validly referred by the Collector and the finding recorded by learned District Judge on Issue No.2 regarding limitation in the impugned award is of no consequence. There was no jurisdictional error in entertaining and deciding the reference petitions by the learned District Judge because of limitation. Therefore, contention of learned counsel for the appellant that the reference petitions before the learned District Judge were time barred and not valid is rejected.

11. No other point was urged.

12. The result of the above discussion is that all the appeals being RFA No.282 of 1997, RFA No.283 of 1997, RFA No.286 of 1997 and RFA No.300 of 1997 are dismissed and impugned award in each appeal is upheld with no order as to costs.

October 29, 2007 ***(Kuldip Singh), J.***

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1. ***RFA No.282 of 1997:***

Chamera Hydro Electric Project. …Appellant.

Versus

Prem Lal & Ors. ..Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Ashok Sharma, Advocate, for respondents No.1(a) and 1(b).**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.2 and 3.

2. ***RFA No.283 of 1997:***

Chamera Hydro Electric Project. …Appellant.

Versus

Hari Ram & Ors. ..Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.AShok Sharma, Advocate, for respondent No.1.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.2 and 3.

3. ***RFA No.286 of 1997:***

Chamera Hydro Electric Project. …Appellant.

Versus

***Rumalo & Ors*. …Respondents.**

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Ashok Sharma, vice counsel for respondent No.1.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.2 and 3.

4. ***RFA No.300 of 1997*:**

Chamera Hydro Electric Project. …Appellant.

Versus

Munshi Ram & Ors. …Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.K.B.Khajuria, Advocate, for respondents No.1 and 2.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.3 and 4.

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